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2 RYAN S. BEZERRA, State Bar No. 178048
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4 A PROFESSIONAL CORPORATION
5 1011 TWENTY-SECOND STREET
6 SACRAMENTO, CA 95816-4907
7 TELEPHONE: (916) 446-4254
8 TELECOPIER: (916) 446-4018

9 Attorneys for Petitioner Yuba County Water Agency

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF YUBA

12 215 Fifth Street
13 Marysville, California 95901

14 BROWNS VALLEY IRRIGATION DISTRICT,) Case No. YCSCCVPT 01-0000224

15 Petitioner,)

16 v.)

17 STATE WATER RESOURCES CONTROL)
18 BOARD,)

19 Respondents.)

20 YUBA COUNTY WATER AGENCY; CORDUA)
21 IRRIGATION DISTRICT; HALLWOOD)
22 IRRIGATION COMPANY; WESTERN)
23 AGGREGATES, INC.; WESTERN WATER)
24 COMPANY; CALIFORNIA DEPARTMENT)
25 OF FISH AND GAME; AND DOES 1)
26 THROUGH 100.)

27 Real Parties in Interest)
28

) DECLARATION OF CURT AIKENS
) IN SUPPORT OF PETITIONER'S
) MOTION TO ADMIT NEW
) EVIDENCE
) Date: April 21, 2003 (nominal)
) Time: 2:30 p.m.
) Dept: 1
) Judge: Hon. Robert A. Barclay

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I, Curt Aikens, declare as follows:

1. I am the General Manager of Yuba County Water Agency ("Yuba") and have held that position since January 1, 2002. From January 19, 1998 through December 31, 2001, I was Yuba's Assistant General Manager.

2. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, would testify to those facts.

3. As Yuba's General Manager, I supervise and am responsible for all of Yuba's operations and understand the history of Yuba's facilities and operations.

4. In 2001, Yuba filed an application with the California Department of Water Resources ("DWR") for a grant to partially fund construction of facilities to deliver water made available by the Yuba River Development Project to the area of Wheatland Water District. The name of Yuba's proposed project to deliver water to that area is the "Yuba/Wheatland In-Lieu Groundwater Recharge and Storage Project."

5. In June 2002, Yuba received notice from DWR that DWR would award Yuba a \$3,150,000 grant to fund part of the \$6,300,000 estimated cost of the Yuba/Wheatland In-Lieu Groundwater Recharge and Storage Project. Exhibit E to this Declaration is a copy of the June 28, 2002 letter from DWR to Yuba, stating that DWR approved Yuba's grant application.

6. One of Yuba's water-supply contractors is Dry Creek Mutual Water Company ("Dry Creek"), whose service area is in southern Yuba County. Because Dry Creek is one of Yuba's newer water-supply contractors and is still building conveyance facilities, Dry Creek has not yet received the entire amount of water to which it is entitled under its contract with Yuba. During 2000, Yuba delivered 8,809 acre-feet of water to Dry Creek.

7. In 2001 and 2002, Yuba transferred water to the Environmental Water Account, a state and federal program administered by DWR under which entities like Yuba transfer water to environmental uses in California in exchange for monetary compensation. Yuba's 2001 and 2002 transfers to the Environmental Water Account were made possible by agreements by several of Yuba's water-supply contractors to pump groundwater in lieu of receiving water that Yuba otherwise

1 would have delivered to those contractors. I was responsible for coordinating those contractors' "in
2 lieu" groundwater pumping.

3 ~~8-~~ Dry Creek participated in Yuba's "in lieu" transfer program in 2001 and 2002 by
4 pumping 9,160 acre-feet of water in 2001, and 5,876 acre-feet in 2002, in lieu of receiving these
5 amounts from Yuba. In addition to this "in lieu" pumping in 2001 and 2002, Yuba also delivered
6 3,134 acre-feet of water to Dry Creek in 2001 and 6,153 acre-feet to Dry Creek in 2002. The sums
7 of Dry Creek's water deliveries from Yuba and its in lieu pumping are Dry Creek's total water
8 demand for Yuba River water in 2001 and 2002. These sums are:

9 (a) 12,294 acre-feet in 2001; and

10 (b) 12,029 acre-feet in 2002.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed March 13, 2003, at Sacramento, California.

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Curt Aikens

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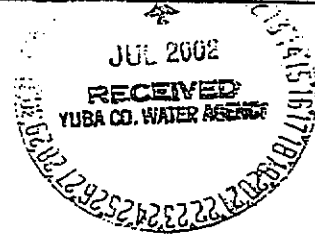
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DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



June 28, 2002

Mr. Bill Harper, Chairman
Board of Directors
Yuba County Water Agency
1402 D Street
Marysville, California 95901-4426

Funding Notification - Safe Drinking Water, Clean Water, Watershed Protection
and Flood Protection Act (Proposition 13) - Groundwater Storage Program

Dear Mr. Harper:

Thank you for your interest in the Proposition 13 Groundwater Storage Program. The Yuba County Water Agency filed an application for a Groundwater Storage Construction Grant.

We are pleased to advise you that your agency's proposal has been selected for funding. This letter serves as our commitment of \$3,150,000 to fund the Yuba/Wheatland In-Lieu Groundwater Recharge and Storage Project. The total project cost is estimated to be \$6,300,000. A detailed description of the proposed project will be included as Exhibit C to the funding contract.

This commitment is subject to the availability of funds from the sale of State general obligation bonds. Should conditions in the bond market prevent the State from selling bonds, delays in funding some projects may occur. We hope that any funding delays would be temporary.

The Bond Law (Water Code Section 79176) specifies that for each project, DWR consider, among other elements, "the consistency with the plans or recommendations proposed by CALFED," and "the distribution of benefits to water supply and to the environment." In your grant application, you state, "the Wheatland Project could potentially provide for a surplus surface water supply in some years that could be used for statewide benefit. This surplus water supply will directly benefit the CALFED objectives", and, "as a secondary benefit to the Wheatland Project, instream flows in the Bear River, Dry Creek, Best Slough, and Hutchinson Creek would be enhanced." In order to ensure that the potential environmental benefits and contribution to CALFED objectives are realized, we look forward to discussing with you how these issues will be addressed in the funding contract.

Mr. Bill Harper, Chairman

JUN 28 2002

The following requirements must also be satisfied before DWR will sign the grant contract:

- As required by the Environmental Quality Act, the Lead Agency for the project must file a Notice of Determination or Notice of Exemption, as appropriate, with the State Office of Planning and Research. Provide to DWR a copy of the Notice along with a written statement from the Lead Agency's legal counsel certifying that no legal challenges have been made within the specified statute of limitations for the Notice of Determination or Exemption.
- Adopt a resolution or resolutions of your governing body accepting the grant, designating an officer to sign a funding contract with DWR, and designating a person to approve Partial Payment Estimates.
- Conduct a public meeting or hold an election as required by your enabling authority. Please see the enclosed public meeting guidelines.
- Provide documentation of the source of your agency's cost share on the project.

After a contract is executed, reimbursement for costs that your agency incurs is contingent upon satisfying requirements for disbursement of funds pursuant to the contract. Before the State can disburse grant funds, you must complete the following:

- Prior to beginning construction, submit final plans and specifications for the project to:

Department of Water Resources
Division of Planning and Local Assistance
Post Office Box 942836
Sacramento, California 94236-0001
Attention: Ralph Svetich

- The plans and specifications must be certified by a California Registered Civil Engineer as to compliance with the approved project. In addition to the plans and specifications, you must also submit an Initial Budget and Expenditure Summary (form 4135, enclosed) reviewed and signed by the Registered Civil Engineer.
- If required, submit evidence that the final project plans and specifications have been reviewed and approved by the California Department of Health Services, Division of Drinking Water and Environmental Management.

Mr. Bill Harper, Chairman
JUN 28 2002
Page 2

- Provide evidence that all necessary permits and approvals required by other State, federal, and/or local agencies have been obtained.

If you have any questions please call me, at (916) 651-9202 or
Linda Buchanan-Herzberg, at (916) 651-9645.

Sincerely,



Naser J. Bateni, Chief
Division of Planning and Local Assistance

cc: (See attached list.)

Honorable Rico Oller
Member of the Senate
State Capitol, Room 2048
Sacramento, California 95814

Honorable Jim Costa
Member of the Senate
State Capitol, Room 5100
Sacramento, California 95814

Honorable Mike Machado
Member of the Senate
State Capitol, Room 3086
Sacramento, California 95814

Honorable Sam Aanestad
Member of the Assembly
State Capitol, Room 4144
Sacramento, California 95814

Mr. Curt Aikens
General Manager
Yuba County Water Agency
1402 D Street
Marysville, California 95901-4426

**PUBLIC MEETING GUIDELINES
FOR CONSTRUCTION CONTRACTS UNDER
THE WATER CONSERVATION BOND LAW PROGRAMS**

Prior to entering into any construction funding contract financed under one of the Water Conservation Bond Law Programs, the Department of Water Resources requires an expression of public support for the proposed project. This support must be demonstrated by a public meeting or an election, if required by an agency's enabling authority.

The meeting, or the required election, shall be conducted after DWR notifies the applicant of its eligibility for funding. The purpose of the meeting is to inform all ratepayers of the project and to provide a forum for public comment on the proposed method of financing the project. This meeting may be combined with any other public meeting that the applicant must hold in regard to the project.

The applicant must set a date for the meeting agreeable to DWR and select a meeting place of sufficient size and in a convenient location to accommodate the anticipated audience. The applicant will provide DWR thirty days written, advance notice of the meeting. In addition, fifteen days advance notice must be provided to the public and local news media. At that time the applicant must also make available to any interested party information describing the project in a form, and at a location, that will enable the public to review it and to make comments.

Within thirty days following the meeting or election, the applicant shall submit a written report to DWR describing the meeting and including an assessment of support and opposition to the project.

On the reverse is a sample format of a notice that may be used to inform the public and local news media of the proposed meeting.

**PUBLIC MEETING GUIDELINES
FOR CONSTRUCTION CONTRACTS UNDER
THE WATER CONSERVATION BOND LAW PROGRAMS**

(SAMPLE NOTICE TO CUSTOMERS)

**NOTICE TO CUSTOMERS
OF THE**

(Public Agency)

OF THE PUBLIC MEETING TO BE HELD

Date: (No sooner than 15 days from the mailing date of the notice)

Location: _____

Time: _____

Subject: Proposed (Name) Project

- Paragraph 1 - Describe the need for the project, the problem it will address, what the project will accomplish and the cost of project.
- Paragraph 2 - Describe funding source(s) and identify participating agencies. Explain that the purpose of the meeting is to inform the public of the proposed project, to provide a forum for public comment on the method of financing the project, and to demonstrate public support for the project.
- Paragraph 3 - Describe the terms and conditions of the State funding, the method of repayment, if applicable, and its impact on current water service charges.
- Paragraph 4 - Invite public attendance and participation in the meeting, and provide for submission of written comments in advance of the public meeting.
- Paragraph 5 - Indicate the location and availability of information describing the project. (This information must be available for review at least 15 days prior to the date of the meeting.)

Name of Agency: _____ DWR Contract No: _____

Contact Person: _____ Telephone: _____

Periodic Estimate No.: _____ for Period : _____ to _____

Line Item	Allotment Title	Allotment Amount	Total Prior Claims	Current Charges	Total Charges to Date	Allotment Balance
	Subtotal This Page					
	Subtotal Page					
	Subtotal Page					
	TOTALS					

INITIAL SUBMISSION ONLY: Reviewed by Registered Civil Engineer _____ RCE No. _____ Date _____

Submit to : Department of Water Resources
Post Office Box 942836, Sacramento, CA 94236-0001

DWR 4135 (New 6/87)

1 **PROOF OF SERVICE**

2 I, Terry M. Olson, declare:

3 I am over the age of eighteen and not a party to this action and work in Sacramento
4 County at Bartkiewicz, Kronick & Shanahan 1011 Twenty-Second Street, Sacramento,
5 California 95816. On March 17, 2003, I served the within document: **Declaration of Curt
Aikens in Support of Petitioner's Motion to Admit New Evidence.**

6

BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission report, which was properly issued by the facsimile machine, showing no errors in transmission to those fax numbers is attached.

7

BY HAND: by causing to be delivered via hand delivery a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

8

9 **BY MAIL:** by placing for collection and mailing at the offices of Bartkiewicz, Kronick & Shanahan, located at 1011 Twenty-Second Street, Sacramento, California 95816 a copy of the document(s) listed above to the person(s) at the address(es) set forth below. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

10

11 **BY OVERNIGHT MAIL:** by placing for overnight delivery by Federal Express a copy of the document(s) listed above enclosed in a sealed mailer to the person(s) at the address(es) set forth below. I am readily familiar with the business' practice for processing of correspondence for delivery by Federal Express and, in the ordinary course of business, the correspondence would be entrusted to Federal Express for overnight delivery on the day on which it is deposited at a Federal Express office.

12

13 **BY PERSONAL DELIVERY:** by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

14 Lawrence David Sanders
15 c/o Todd Hutchins
16 RiverLaw
17 216 Main Street
18 Nevada City, CA 95959

William D. Cunningham
Deputy Attorney General
1300 I Street
Sacramento, CA 95814

19 Edward J. Tiedemann
20 Scott Morris
21 Kronick, Moskovitz, Tiedemann & Girard
22 400 Capitol Mall, 27th Floor
23 Sacramento, CA 95814-4417

Daniel F. Gallery
926 J Street, Suite 505
Sacramento, CA 95814

24 Paul R. Minasian
25 Minasian, Spruance & Sexton, LLP
26 1689 Bird Street
27 Oroville, CA 95965-1679

Donald E. Huckins
Attorney at Law
439 Center Street
Yuba City, CA 95991-4520

Charlton Bonham
Trout Unlimited
828 San Pablo Avenue, Suite 208
Albany, CA 94706

1 Clifford T. Lee
2 William Jenkins
3 Tiffany Yee
4 Deputy Attorneys General
5 455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-3664

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed on March 17, 2003 at Sacramento, California.

10 _____
11 Terry M. Olson

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